

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





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**TRANSCRIPT OF RECORD**

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**United States Court of Appeals for the  
District of Columbia**

**JANUARY TERM, 1940.**

**No. 7567**

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**575**

**PEARL E. MASON, APPELLANT,**

**VS.**

**AUTOMOBILE FINANCE COMPANY, INC.,  
A CORPORATION.**

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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF COLUMBIA.**

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**FILED JANUARY 9, 1940**

**PRINTED MARCH 8, 1940**



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# United States Court of Appeals for the District of Columbia

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a District Court of the United States  
For the District of Columbia

At Law No. 89776.

PEARL E. MASON, *Plaintiff*,

vs.

AUTOMOBILE FINANCE COMPANY, INC., A CORPORATION,  
*Defendant.*

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

BE IT REMEMBERED, that in the District Court of the  
United States for the District of Columbia, at the  
City of Washington, in said District, at the times  
hereinafter mentioned, the following papers were  
filed and proceedings had, in the above-entitled  
cause, to wit:

1 *Declaration*

Filed January 17 1938

In the District Court of the United States  
For the District of Columbia

At Law No. 98776

PEARL E. MASON, 1116 First St., S. E., Washington, D. C.,  
*Plaintiff*,

vs.

AUTOMOBILE FINANCE COMPANY, INC., A CORPORATION,  
3068 M St., N. W., Washington, D. C., *Defendant.*

*First Count*

The plaintiff, Pearl E. Mason, sues the defendant, Auto-  
mobile Finance Company, Inc., a corporation, by reason of  
the following facts:

1. The plaintiff avers that on, to-wit, the 4th day of August, 1937, the said defendant was the owner and/or in control of a motor vehicle, and that by and through its agents, servants and employees, it was operating the said motor vehicle upon the public streets in the District of Columbia on South Capitol Street, at or near its intersection with O Street, and the plaintiff avers that it was the duty of the said defendant, by and through its agents, servants and employees, to use due and proper care in the operation, management and control of the said motor vehicle aforesaid.

2. The plaintiff avers that in the operation of the said motor vehicle aforesaid, the same was being driven and operated at a great, excessive and reckless, careless and negligent rate of speed.

3. The plaintiff avers that by reason thereof, as  
2 she was crossing South Capitol Street in a motor vehicle, driving in an easterly direction on O Street, the said motor vehicle of the said defendant, operated at said excessive, dangerous, careless and reckless rate of speed as aforesaid, ran into and collided with the motor vehicle which the plaintiff was operating in the rear thereof with great force and violence.

4. The plaintiff avers that by reason of the premises, she was seriously, dangerously and permanently injured in and about her head, face, body and limbs; the plaintiff received severe contusions of the left side of her head, contusions of the left ribs, hip and lumbar region of the back; received injuries to her teeth and jaw; received a sprain of the right hand, and received internal injuries, by reason of all of which she was made sick, sore, lame and disabled. The plaintiff received a severe shock to her nervous system and thereby suffered great physical pain and mental anguish and will in the future continue so to suffer, and she is permanently maimed, disabled and crippled.

WHEREFORE, the plaintiff brings this suit and claims damages of the said defendant in the sum of Ten Thousand Dollars (\$10,000.00), besides costs.

#### *Second Count*

The plaintiff, Pearl E. Mason, sues the defendant, Automobile Finance Company, Inc., a corporation, by reason of the following facts:



1. The plaintiff avers that on, to-wit, the 4th day of August, 1937, the said defendant was the owner and/or in control of a motor vehicle, and that by and through its agents, servants and employees, it was operating the said motor vehicle on the public streets in the District of Columbia on South Capitol Street at or near its intersection with O Street. And the plaintiff avers that it was the duty of the said defendant, by and through its agents, servants and employees, to use due and proper care in the operation, management and control of the said motor vehicle aforesaid.

2. The plaintiff avers that notwithstanding the duty aforesaid, the said defendant, by and through its agents, servants and employees, negligently and carelessly drove and operated the said motor vehicle in this, to-wit:

That as the said plaintiff was proceeding east on O Street, aforesaid, and was crossing South Capitol Street aforesaid, and had passed a point in the center of the intersection of South Capitol Street, driving a motor vehicle, and while the said motor vehicle in which the plaintiff was riding as aforesaid, was between the center of South Capitol Street and the east curb of South Capitol Street, on O Street, the motor vehicle of the said defendant, proceeding in a southerly direction on South Capitol Street, was negligently, carelessly, recklessly and at a fast, excessive and dangerous rate of speed, driven and operated upon and against the motor vehicle which the plaintiff was driving as aforesaid, so that the same were in a collision.

3. The plaintiff avers that by reason of the premises she was seriously, dangerously and permanently injured in and about her head, face, body and limbs; the plaintiff received severe contusions of the left side of her head, contusions of the left ribs, hip and lumbar region of the back; received injuries to her teeth and jaw; received a sprain of the right hand, and received internal injuries, by reason of all of which she was made sick, sore, lame and disabled. The plaintiff received a severe shock to her nervous system and thereby suffered great physical pain and mental anguish and will in the future continue so to suffer, and she is permanently maimed, disabled and crippled.

4 WHEREFORE, the plaintiff brings this suit and claims damages of the said defendant in the sum of Ten Thousand Dollars (\$10,000.00), besides costs.

*Third Count*

The plaintiff, Pearl E. Mason, sues the defendant, Automobile Finance Company, Inc., a corporation, by reason of the following facts:

1. The plaintiff avers that on, to-wit, the 4th day of August, 1937, the said defendant was the owner and/or in control of a motor vehicle, and that by and through its agents, servants and employees, it was operating the said motor vehicle on the public streets in the District of Columbia on South Capitol Street, at or near its intersection with O Street. And the plaintiff avers that it was the duty of the said defendant, by and through its agents, servants and employees, to use due and proper care in the operation, management and control of the said motor vehicle aforesaid.

2. The plaintiff avers that notwithstanding the duty aforesaid, the said defendant, by and through its agents, servants and employees, drove and operated the said motor vehicle at a great, excessive, careless and negligent rate of speed; drove and operated the said motor vehicle without keeping a proper lookout ahead; failed to keep its said motor vehicle under proper control, and failed to observe the Traffic and Motor Vehicle Regulations for the District of Columbia then in full force and effect, viz:

“Section 23. Drive on Right Side of Highway.

(a) Vehicles shall be driven upon the right half of the highway, and the driver shall drive as closely as practicable to the right-hand edge or curb of the highway.”

in that the said defendant, by and through its agents, servants and employees, drove the said motor vehicle to  
5 the left of the center of the said highway, in violation of the aforesaid regulation.

3. The plaintiff avers that by reason of the negligence aforesaid, as the plaintiff was proceeding east on O Street aforesaid, and was crossing South Capitol Street aforesaid, and had passed a point in the center of the intersection of South Capitol Street, driving a motor vehicle, and while the said motor vehicle in which the plaintiff was riding was between the center of South Capitol Street and the east curb of South Capitol Street, on O Street, the motor



vehicle of the said defendant, proceeding in a southerly direction on South Capitol Street, was negligently, carelessly, recklessly, and at a fast, excessive and dangerous rate of speed, driven and operated upon and against the motor vehicle which the plaintiff was driving, as aforesaid, so that the same were in a collision.

4. The plaintiff avers that by reason of the premises she was seriously, dangerously and permanently injured in and about her head, face, body and limbs; the plaintiff received severe contusions of the left side of her head; contusions of the left ribs, hip and lumbar region of the back; received injuries to her teeth and jaw; received a sprain of the right hand and received internal injuries, by reason of all of which she was made sick, sore, lame and disabled. The plaintiff received a severe shock to her nervous system and thereby suffered great physical pain and mental anguish and will in the future continue so to suffer, and she is permanently maimed, disabled, and crippled.

WHEREFORE, the plaintiff brings this suit and claims damages of the said defendant in the sum of Ten Thousand Dollars (\$10,000.00), besides costs.

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*Fourth Count*

The plaintiff, Pearl E. Mason, sues the defendant, Automobile Finance Company, Inc., a corporation, by reason of the following facts:

1. The plaintiff avers that on, to-wit, the 4th day of August, 1937, the said defendant was the owner and/or in control of a motor vehicle, and that by and through its agents, servants and employees, it was operating the said motor vehicle on the public streets in the District of Columbia on South Capitol Street, at or near its intersection with O Street. And the plaintiff avers that it was the duty of the said defendant, by and through its agents, servants and employees, to use due and proper care in the operation, management and control of the said motor vehicle aforesaid.

2. The plaintiff avers that notwithstanding the duty aforesaid, the said defendant, by and through its agents, servants and employees, drove and operated the said motor vehicle at a great, excessive, careless and negligent rate of speed; drove and operated the said motor vehicle without keeping a proper lookout ahead; failed to keep its said

motor vehicle under proper control, and failed to observe the Traffic and Motor Vehicle Regulations for the District of Columbia then in full force and effect, viz:

“Section 28. Right of Way Between Vehicles.

(a) x x x The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection. When two vehicles enter an intersection at the same time, the driver of the vehicle on the left shall yield to the driver on the right.”

in that the said defendant, by and through its agents, servants and employees, failed to yield the right of way to the plaintiff, who was to the right of said defendant's motor vehicle, in violation of the aforesaid regulation.

7        3. The plaintiff avers that by reason of the negligence aforesaid, as the plaintiff was proceeding east on O Street, aforesaid, and was crossing South Capitol Street aforesaid, and had passed a point in the center of the intersection of South Capitol Street, driving a motor vehicle, and while the said motor vehicle in which the plaintiff was riding was between the center of South Capitol Street and the east curb of South Capitol Street, on O Street, the motor vehicle of the said defendant, proceeding in a southerly direction on South Capitol Street, was negligently, carelessly, recklessly, and at a fast, excessive and dangerous rate of speed, driven and operated upon and against the motor vehicle which the plaintiff was driving, as aforesaid, so that the same were in a collision.

4. The plaintiff avers that by reason of the premises she was seriously, dangerously and permanently injured in and about her head, face, body and limbs; the plaintiff received severe contusions of the left side of her head; contusions of the left ribs, hip and lumbar region of the back; received injuries to her teeth and jaw; received a sprain of the right hand and received internal injuries, by reason of all of which she was made sick, sore, lame and disabled. The plaintiff received a severe shock to her nervous system and thereby suffered great physical pain and mental anguish and will in the future continue so to suffer, and she is permanently maimed, disabled crippled.



WHEREFORE, the plaintiff brings this suit and claims damages of the said defendant in the sum of Ten Thousand Dollars (\$10,000.00), besides costs.

IRVING B YOCHELSON  
JOSEPH C TURCO

*Attorneys for Plaintiff.*

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*Pleas*

Filed February 8 1938

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1. Now comes the defendant, Automobile Finance Company, a corporation, by its attorneys Norman B. Frost, Frank H. Myers and Frederic N. Towers, and, for plea to the declaration filed herein by the plaintiff, Pearl Mason, and to all counts thereof, denies that, on, to-wit, August 4, 1937, it was the owner and/or in control of a certain vehicle which was being operated in a southerly direction on South Capitol Street at or near its intersection with O Street, Northwest, in the District of Columbia, and which was alleged to have collided with plaintiff's automobile in said intersection, and denies that said motor vehicle was then and there being operated by its agents, servants and employees and said defendant, being without sufficient information and knowledge concerning the other allegations in said declaration and the counts thereof, neither admits nor denies the same but demands strict proof thereof.

2. For a further plea to said declaration, and to all counts thereof, filed herein by said plaintiff Pearl Mason, defendant denies that on, to-wit, August 4, 1937, it was the owner and/or in control, through its servants, agents and employees, of said certain motor vehicle which was in collision with plaintiff's automobile at the intersection of South Capitol and O Streets, Northwest, in the District of Columbia, but defendant is reliably informed and believes and therefore denies that said motor vehicle was being operated at said time and place at a great, excessive and reckless, careless and negligent rate of speed and denies that the operator of said motor vehicle violated any of the provisions of the Traffic and Motor Vehicle Regulations then and there in force in the District of Co-

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lumbia as charged in plaintiff's declaration and the counts thereof, and denies that the said operator failed to keep a proper lookout and to keep his said motor vehicle under proper control and denies that said motor vehicle was operated to the left of the center of said highway and denies that the automobile driven by plaintiff had entered said intersection first and denies that said plaintiff was entitled to the right of way at said intersection but avers on the other hand that the operator of said other motor vehicle entered said intersection in advance of said plaintiff's automobile reaching said intersection and that said other motor vehicle was therefore entitled to the right of way over plaintiff's said automobile and denies each and every other allegation in said declaration and all counts thereof, except those allegations relating to plaintiff's injuries and losses, concerning which defendant has not sufficient information and knowledge and can therefore neither admit nor deny the same, but demands strict proof thereof.

3. For a further plea to said declaration filed herein by the plaintiff Pearl Mason, and to all counts thereof, said defendant denies that, on, to-wit, August 4, 1937, it was the owner and/or in control, through its servants, agents and employees, of a certain motor vehicle which was in collision with plaintiff's automobile at the intersection of South Capitol and O Streets, Northwest, in the District of Columbia, but defendant is reliably informed and believes and therefore avers that plaintiff's alleged injuries and losses were due to the carelessness and negligence of the plaintiff herself in the operation and control of her said

10 automobile at said time and place in that said plaintiff negligently and carelessly failed and omitted to exercise due and reasonable care and caution for her own safety in that she negligently and carelessly operated her said automobile easterly on O Street at a fast, reckless and unlawful rate of speed and negligently and carelessly continued to operate her said automobile into said intersection without slowing down and without keeping a proper lookout for other motor vehicles then and there in said intersection and without yielding the right of way to said motor vehicles, in violation of Article VI, Section 28, paragraph (a) of the Traffic and Motor Vehicle Regulations

then and there in force in the District of Columbia, and without keeping her said automobile under such reasonable control that she could have brought her said automobile to a stop and thus avoided said collision but on the other hand, said plaintiff carelessly and negligently and heedlessly and in wilful disregard of her own safety and of the safety or rights of others, and in violation of Article VI, Section 21, paragraph (a) of said traffic regulations, drove and operated her said automobile as aforesaid into said intersection, all of said acts of negligence and carelessness on her part contributing to cause said collision and any personal injuries and losses incurred by her therein.

FROST, MYERS & TOWERS  
By FRANK H. MYERS  
*Attorneys for Defendant.*

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*Verdict and Judgment*

Filed November 30 1939

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This cause having come on for hearing on the 29th day of November, 1939, before the Court and a jury of good and lawful persons of this district, to-wit:

Charles T. Hartley  
Worthington B. Houghton  
Magnus J. Shelby  
L. Audrey Warren  
Milton S. Bush  
John P. Daly

Charles J. Weidman, Sr.  
Philip Nalley  
Margaret Nash Boran  
Anna C. O'Brien  
Lula L. Engle  
Edward J. Flood

who, after having been duly sworn to well and truly try the issues between Pearl E. Mason, plaintiff, and Automobile Finance Co., Inc., defendant, and after this cause is heard and given to the jury in charge, they by direction of the Court upon their oath say this 30th day of November, 1939, that they find for the defendant against said plaintiff.

Wherefore, it is adjudged that said plaintiff take nothing by this action, that said defendant go hence without



day, be for nothing held and recover of plaintiff its costs of defense of this action.

by order of Goldsborough, J.

CHARLES E. STEWART,  
*Clerk.*

By PAUL A. DAWSON,  
*Asst. Clk.*

12

*Memorandum*

December 21, 1939

Motion for new trial waived in open Court. Cost Bond fixed \$100.00 or \$50.00 cash. Goldsborough, J.

*Notice of Appeal*

Filed December 21 1939

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Notice is hereby given this 21st day of December, 1939, that Pearl E. Mason hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 30<sup>th</sup> day of November, 1939 in favor of Automobile Finance Co. Inc. a Corp. against said Pearl E. Mason.

JOSEPH C TURCO  
*Attorney for Plaintiff*

*Memorandum*

December 21, 1939

Cost Bond (\$100.00) on appeal—filed.

*Assignment of Error*

Filed December 21 1939

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The plaintiff assigns as error committed by the trial Court in this case the following:



13 The ruling of the Court directing the jury to return a verdict for the defendant at the close of the entire case.

JOSEPH C TURCO  
IRVING B YOCHELSON  
*Attorneys for Plaintiff*

14 Endorsed: Filed Jan 3-1940

*Stipulation*

In Re Questions & Answers to be Substituted in Lieu of Narrative Statement

It is hereby stipulated and agreed by and between counsel for the respective parties, as evidenced by their signatures hereto, that, in accordance with Rule 75(c) of the Federal Rules of Civil Procedure, the attached duplicate copies of Questions to and Answers of Witnesses Clinton Whitley and J. G. Olmer, which are hereby made a part of this Stipulation, shall be used in the Record on Appeal herein in lieu of the Narrative Statement of Evidence of these same witnesses called for in the Designation of Record heretofore filed herein, and that said copies are true, accurate, correct and identical copies of the portions of the stenographic transcript of proceedings before the District Court intended by counsel to be used in lieu of said Narrative Statement of Evidence.

JOSEPH C TURCO  
IRVING YOCHELSEN  
*Attorneys for Plaintiff*

FROST, MYERS & TOWERS  
By FRANK H. MYERS  
*Attorneys for Defendant.*

December 29, 1939

15 *Questions and Answers to be Substituted in Lieu of Narrative Statement for Witnesses Clinton Whitley and J. G. Olmer.*

Filed Jan 3-1940

**Clinton Whitley** produced as a witness on behalf of the plaintiff, testified as follows:

## Direct Examination

By Mr. Turco:

Q. Whitley, your first name is Clinton, and your full name is Clinton Whitley, is it not? A. Clinton Whitley, yes, sir.

Q. How do you spell that? A. W-h-i-t-l-e-y.

Q. You reside now at 1302 Twenty-Second Street, Northwest? A. Yes, sir.

Q. And are employed as an elevator boy at the Westchester? A. That is right.

Q. Directing your attention back to the month of August, 1937, you were then living at 1312 Twenty-Second Street, Northwest? A. Yes, sir.

16 Q. During the month of August, or a month or so before August, did you have occasion to have some conversation with anyone at the Automobile Finance Company about the purchase of a car? A. Yes, sir.

Q. Tell us about when it was you first visited the Automobile Finance Company, and for what purpose. A. It was about the 1st of August, or around the 1st of August.

Q. I mean on the first occasion you visited the finance company. A. I do not recall what date it was.

Q. When did you first visit, if you can remember, the Automobile Finance Company? A. I would say a month before the accident.

Q. Do you recall where the Automobile Finance Company is located? A. It is on M Street, around Thirty-Sixth; I suppose somewhere around there.

Q. Was the Finance Company located on M Street in 1937? A. Yes, sir.

Q. The place you visited? A. Yes, sir.

Q. Can you tell us whether or not you had a conversation there with anyone? A. During the first visit?

Q. Yes. A. Yes, sir, I did.

Q. Can you tell us with whom you talked? A. With the man who was—who was the boss of the place, I suppose.

Q. Do you recall his name? A. No, sir, I don't recall his name.

Q. Have you seen him around here today? A. No, sir.

Q. Can you describe the room, or the location of the place? A. Inside?



17 Q. Yes. A. It is just a small place, with an office on the left as you come in the door, and a back yard to park, where people can come up and park cars.

Q. This man with whom you had this conversation, where was he when you first went there? A. He was in the back of the office. I talked with the lady first, and she referred me to him.

Q. She referred you to him? A. Yes.

Q. Tell us what if any conversation you had with him.

Mr. Myers. Do you mean the nature of the conversation?

Mr. Turco. Yes.

Mr. Myers. I object to that.

The Court. It is impossible for the Court to tell whether it is proper testimony or not, and the jury ought to be excluded.

Mr. Turco. I think that is a good suggestion, your Honor.

(At this point, the jury retired and after argument by counsel for both parties, the Court agreed to hear the testimony subject to the defendant's reservation of its right to have the testimony stricken out at the end of the case if deemed inadmissible.)

Q. Whitley, you have testified that you first went to the Finance Company's office to see about taking over the notes on this car about a month before the accident occurred. A. Yes.

Q. When was the next occasion when you went there, the date of it? The approximate date? A. Before the accident?

Q. Yes. A. I would say around a week afterwards.

18 Q. A week before? A. A week after I went the first time.

Q. With whom did you talk on that occasion? A. To the same man I talked to at first, the man I don't know.

Q. Whose name you don't know? A. Whose name I don't know, yes, sir.

Q. When did you go there again? And, on these occasions when you went there, did you see this man Melancz working around there?

Mr. Myers. There has never been the name of Melancz mentioned.

The Court. That was a very great mistake.



Mr. Turco. May we approach the bench?

The Court. You mixed yourself up with your argument; I understand it. But I have not anything more to say about it.

By Mr. Turco:

Q. Did you on any of the occasions that you went there see a man there whom you later met? A. No, sir.

Q. Sir? A. I did not see him, no, sir.

Q. When was the next time you went there, to the office? A. I went two or three times a week, sometimes.

Q. Will you tell us whether you recall what was your purpose in going there? A. My purpose was in going there to meet this Clarence there, but he never did show up any time I went there to talk over this car.

Q. By Clarence, you mean Clarence Worthy? A. Yes, sir.

Q. You had conversations with this other gentleman whom you cannot name? A. Yes, sir.

19 Q. Drawing near to the time of the accident, did you have an occasion to make an appointment to meet somebody at the Walker Garage? A. Yes, sir.

Q. With whom did you make the date? A. With this man that is in charge there.

Q. Did he tell you who would meet you there? A. Yes, sir.

Q. Kindly state his name, if you know. A. Mr. Melancz.

Q. Had you ever seen Mr. Melancz in that place of business before? A. Once.

Q. At the time that you saw him, can you recall what Mr. Melancz was doing? A. He had some papers, going around in there. I don't know what he was going to do with them.

Q. In what part of the place was he? A. In the office part. He came from in the back.

Q. When did you make this appointment to meet Mr. Melancz at the Walker Garage? A. That same day.

Q. What day? A. The day of the accident.

Q. Tell us what happened that morning. A. That morning I went down to the office of the Automobile Financing Company, and this man—we don't know his name—he was in there, and I talked with him and he said he would have one of his men, Mr. Melancz, to go there with me with the

dealer's tags, to the Walker's Garage, and to see what we can do about the car, and bring the car back to him after inspection, before doing anything else.

Q. You mean after inspection? A. After inspection.

20 Q. Go ahead. A. That is about all.

Q. That was the conversation, and did there come a time when you did go to the Walker Garage? A. Yes, sir. I went there around 11 o'clock to meet this man there, Mr. Melancz, but he was not there.

Q. What did you do? A. Then I came back to the Automobile Financing Company, and Mr. Melancz—I waited around about half an hour, and then he came in.

Q. Did you have a conversation with him? A. No, sir.

Q. With whom did you have a conversation? A. With this man in the office.

Q. What did Mr. Melancz do or say to you prior to going down to Walker's Garage? A. He asked me did I know where the car was.

Mr. Myers. Just one minute. There is no ascertainment as to where he was talking.

Mr. Turco. In the office.

Mr. Myers. He said he was talking in the office with this man, didn't he?

The Court. No; Melancz was this particular man.

By Mr. Turco:

Q. You were in the place when Mr. Melancz came in? A. Yes, sir.

Q. With the dealer's tag? Is that correct? A. He came in with the tags.

Q. And you had a conversation with Mr. Melancz? A. On the way down.

Q. What was the nature of the conversation?

21 Mr. Frost. Is this all under the reservation that your Honor indicated, of subsequent motion to strike?

The Court. Oh, yes.

A. On the way down he was asking me if I knew where the car was, where it was parked at, and I told him it was somewhere near the garage then, because they were pulling it in the garage when I left.

The Court. When was that?



Mr. Turco. On the 4th, the day of the accident.

The Court. Is he talking about after the accident?

Mr. Turco. No, before. This is just prior.

The Court. What does he mean about pulling the car in?

Mr. Turco. He had been to the garage to meet Mr. Melancz, and Mr. Melancz was not there, and he went back to the Finance Company and waited around for Mr. Melancz, and he finally got there and they got in an automobile and started back to the garage.

Q. What is the name of the garage? A. Walker's Garage.

Q. What happened when you got there? A. When I left, the car was in the alley, and they had pulled it around in front of the garage, and doing some more work on it.

Mr. Myers. I think the Court was inquiring about who is "they" who were pulling the car around and doing some work on it.

The Witness. This Clarence Worthy, and the people that worked in the garage—he was not there at the time.

The Court. What did you have to do with Clarence Worthy? Who was he?

The Witness. He was the owner of the car before the Finance.

The Court. What do you mean by "before the Finance"?

The Witness. He took it over. He borrowed money on the car from the Finance. He was the one that owned the car.

Q. You had gotten down to the garage with Mr. Melancz. What if any conversation took place between you and Mr.

22 Melancz, and what did you do? A. We checked over the car and everything, and I had gotten a battery to put in the car, and he suggested he knew some place where I could get parts, old parts, and that was the first place we were going before inspection.

Q. What if anything happened to the tags? A. Mr. Melancz and I put the tags on.

The Court. Didn't it have tags on it?

The Witness. No sir. It had been setting there for a couple of years.



By Mr. Turco:

Q. Did you put the tags on? A. Yes, sir.

The Court. What kind of tags were they?

The Witness. Dealer's tags.

By Mr. Turco:

Q. Did you know whether or not, from your conversation with this man in the Finance Company, Worthy was in default in his payments? A. Behind?

Q. Yes. A. Yes, he was.

Q. Can you tell us for how many months? A. I disremember, but I think it was possibly about three months behind.

Q. Going back to the garage now, after putting on the tags—by the way, who put the tags on? A. Mr. Melancz and I. He helped.

Q. Just prior to your leaving the garage, did you have a conversation with Mr. Melancz with respect to where you were going? A. Yes. He told me to follow him to this junk place. I did not know where it was.

Q. Did you do so? A. Yes, sir.

23 By the Court:

Q. What were you following him for? A. What was I following him for?

Q. Yes. A. I was following to go to the junk yard and get these parts.

By Mr. Turco:

Q. You did not know where it was? A. I did not know where it was.

Q. Can you tell us who was to purchase, to make the purchase of these old parts? A. He was to get them and I was to pay for them, because I was to put the car in running condition. Mr. Melancz was to get these parts.

The Court. And you would pay for them?

The Witness. I would pay for them. He had been there before.

By Mr. Turco:

Q. Was that a place he suggested? A. Yes, sir, that is a place he suggested.

Q. Do you recall what route you took on the way down?  
A. No, sir, I don't.

Q. After the collision between your car and Mrs. Mason, can you tell us what happened with respect to—by the way, who had the registration card for the tags? A. Mr. Melancz.

Q. Did there come a time when he handed you the registration card? A. After the accident.

Q. How soon after the accident? A. Right after it occurred.

Q. Did he say anything to you when he handed you the registration card?

Mr. Myers. I object to that. That is after the accident had occurred.

Mr. Turco. It is all a part of the *res gestae*.

24 The Court. It does not have to be a part of the *res gestae*. I will have to overrule the objection. Proceed.

By Mr. Turco:

Q. Will you kindly tell us what he said as he handed you the registration card? A. He said, "Here is the registration card"—

Mr. Myers. Just one minute. May I make another objection? The fact that he handed it to him and what he said with respect to binding the company is not pertinent or admissible as far as imposing liability is concerned.

The Court. I cannot pass on that right now. Proceed.

Mr. Myers. I note that objection.

The Court. Yes, sir.

By Mr. Turco:

Q. What if anything did he say? A. He said, "Here is the registration card, and you have it when the officers come."

By the Court:

Q. Whose registration card was that? A. The dealer's tags; it belongs to the dealer's tags, registration for the cars.

By Mr. Turco:

Q. To whom did the tags belong? A. To Mr. Melancz—he had them. I don't know.



Q. Would you say who was he employed by?

Mr. Myers. That is a conclusion, as to whom he is employed by.

The Court. That is true.

Mr. Turco. The records will show that, as a matter of fact.

The Court. You had better introduce the records.

Mr. Turco. Oh, yes. They are here.

25 Q. Did you have any further conversation soon after the collision with Mr. Melancz with respect to your arrest? A. After the accident?

Q. After the accident. A. Yes.

Mr. Myers. I object to that. I don't see that that has a thing to do with it, the conversation he had with Mr. Melancz with respect to his arrest.

The Court. As I said before, I cannot pass on that at this time. I will have to overrule the objection.

By Mr. Turco:

Q. If you had any further conversation, tell us what that was. A. After the accident?

Q. Yes. A. After the accident, the officers took pictures and whatever so they did, and then they took me to the precinct, No. 4 Precinct, and they placed a charge against me of reckless driving, and he told me that it would be all right, that his company would get a lawyer and get me out.

Mr. Myers. This conversation took place at the precinct?

The Witness. Yes, sir. He went with me to the precinct.

Mr. Turco. I think that is all, your Honor.

Cross Examination

Mr. Frost. If we cross-examine, do I understand that we do not waive our right to move to strike his testimony?

The Court. Not at all.

By Mr. Frost:

Q. You won't object if I call you Clinton? A. No, sir.

26 Q. Just to be brief. I understand that your first visits down to the headquarters of the Finance Company were for the purpose of meeting Clarence Worthy. Is that right? A. The first visit?



Q. You said that your purpose in going there was to meet Clarence Worthy. A. Yes, sir.

Q. And Clarence did not show up. A. For a couple times, he did not.

Q. So you went there several times for the purpose of meeting Clarence Worthy, and did not meet him? A. Yes, sir.

Q. Then you finally got down there on the day of the accident. Was Clarence there that day? A. No, sir. We met up a day, and got together; he told me to bring him in, because he wanted to see him for his back payments, and I brought him up.

The Court. Who?

The Witness. Clarence.

By Mr. Frost:

Q. So you and Clarence finally got down there together? A. Yes, sir.

Q. What had you done with Clarence Worthy with respect to this car? What arrangements had you made with him? A. I had arranged to take the car over and put it in running condition, and would pay the notes. If he would put it in running condition, I would pay for it.

Q. Were you buying the car from Clarence Worthy? A. I was not buying it. I was going to take over the notes he owed on the car.

27 Q. Weren't you paying him \$117, or wasn't he giving the debt to you in consideration of your receiving the car? A. I paid \$130 for a motor to put in the car.

Q. And that was part of the bargain? A. I was to put it in running condition, anyway.

Q. And the day you went down to this garage, the man in the office, whom you say you saw but whose name you do not know, said to you, "We will see what we can do about bringing the car back after the inspection." Is that it? A. No. He asked us to bring it back.

Q. He asked you to bring it back after the inspection? A. Before we did anything else.

Q. Did the inspection ever take place? A. No, sir.

Q. You had not had an inspection at the time the accident occurred? A. No, sir.

Q. What was the purpose in getting these parts with respect to having an inspection made? A. In order that it would pass inspection.

Q. In other words, you wanted to get parts to put the car in condition so you could have an inspection? A. That same day.

The Court. Is there any question but what there would have to be a transfer of title from Worthy to this boy in order to complete that transaction?

Mr. Frost. That was necessary, sir.

The Court. There is no dispute about that?

Mr. Turco. Of course there is. Our contention is that at the time of all of this transaction the title, although in the name of Worthy, was actually in the possession of the Finance Company.

The Court. How could title be gotten from Worthy to this boy?

28 Mr. Turco. It had never gotten there.

Mr. Frost. I think you do not understand the Court's question.

The Court. If there had been a transfer of title from Worthy to this young man—

Mr. Frost. How would it have gotten there?

The Court. There would have had to be a transfer from Worthy to Whitley.

Mr. Frost. That is correct.

Q. Getting back, Clinton, to the time of the accident, you had not had an inspection? A. No, sir.

Q. Now, at the garage you say that they had pulled the car around and were doing some work on the car, and by "they" you meant Worthy, or the people who were fixing the car? A. Just the people. I had not seen Worthy.

Q. What about this battery? From whom did you get the battery? A. I bought a new battery.

Q. And that was part of the operation of putting it in condition for inspection? A. That I was to do.

Q. You were to pay for these parts that you were going to get down at the junk yard? A. He was to get them and I was to pay for them.

Q. This man Melancz suggested that you might get them cheaper? A. Yes, sir.

Q. At some place he knew about? A. Yes, sir.



The Court: Why was he doing this?

The Witness. To get the car off his hands; they was to get the car over to me when I got back to the Finance Company.

By Mr. Frost:

29 Q. In other words, when you went back to the Finance Company, after you got the car inspected, you were then going to complete this transaction with them, and you were going to take the car over? Is that right? A. That is right.

Q. And you were to pay for these parts down there, just like you paid for the battery? A. Yes, sir.

The Court. What had become of the chattel mortgage in the transaction?

Mr. Frost. We will state, sir, and support it with evidence, that the chattel mortgage had never been disturbed.

The Court. That is a part of your case.

Mr. Frost. Yes, sir, and the title had never been disturbed, and this was a preliminary transaction which never was culminated, because inspection was never had and the car was never delivered to the Finance Company.

Q. Were you driving the automobile when it was in the accident? A. Yes, sir.

Q. Was anybody with you? A. I was alone. I was with Mr. Melancz. He was in his car and I was in this one.

Q. You were alone in this car? A. Yes, sir.

### Redirect Examination

The Court. He has said, as I understand it, several times that there was a man who appeared to be the boss, but he does not know his name. Now, the Court will permit you to ask if he had any conversation with him, this boss man, and what the conversation was, if that is what you want to do.

Mr. Turco. That is what I want.

Q. Did you hear his Honor put that question? A. If I had a talk with the boss man?

30 Q. Yes. A. I did have a talk with him.

Q. Tell us what that was. A. When I went up there I had a talk with him, and I was asking about taking over this car. He said, "You have to get Worthy up here



with you in order to, so that you can come to some agreement," because he was going to take the car if Worthy did not pay his notes.

Thereupon **J. G. Olmer** called as a witness on behalf of the defendant, testified as follows:

Direct Examination

By Mr. Frost:

Q. Your full name is—A. J. G. Olmer.

Q. Were you at the time of this occurrence we are here inquiring into, with the Automobile Commercial Corporation? A. I was manager of the office at 3068 M Street.

Q. Do you remember the man Worthy, with whom your company had some business transactions? A. Yes, sir.

Q. What was the relationship of the company to that man?

The Court. There ought to be a record about that.

Mr. Frost. Yes, sir.

A. We were carrying a loan for him at that time, which was secured by a chattel mortgage.

By Mr. Frost:

Q. Do you have those loan papers with you? A. No, sir.

Mr. Frost. We will produce those later.

Mr. Turco. If it is certain that there are written records, they are the best evidence, and I object.

31 The Court. That was my suggestion.

Mr. Frost. What were you objecting to?

Mr. Turco. That the best evidence ought to be produced, if there is written evidence.

Mr. Frost. You are objecting to my examining this witness?

Mr. Turco. Of course not.

Mr. Frost. May I proceed?

The Court. The Court thinks the testimony that is clearly admissible is that part in which he states that he was carrying a loan. He can further testify, if it is true, that they made a sale of a certain automobile to this man Worthy, and, of course, when it comes to the question of what the relationship was after the sale between Worthy and the Finance Company, if it was not a cash sale, it would have to be some matter of record which should be produced.

By Mr. Frost:

Q. Now, did you at any time personally interview Worthy? A. Yes.

Q. Will you state, without stating what the interview was, the times when you so interviewed him? A. Only on one occasion that I know of.

Q. When was that with respect to the time this accident occurred? A. That was before that time.

Q. How long before? Just shortly before, or a long time before? A. It must have been about three weeks, or a month.

Q. Let me ask you this: Were you the employee of the company that personally made the arrangements for the loan to Worthy, or did someone else make it? A. Someone else did that.

Q. On this occasion when you talked with him, what was the conversation about? A. The conversation was  
32 with regard to having him make his payments.

Q. Did that take place in the office, or elsewhere? A. It took place in the office.

Q. Did there come a time when Mr. Whitley came into the office and talked to you? A. Yes, sir.

Q. When was that with respect to the time of the accident? A. That was before the accident.

Q. How long before? A. That was, I would say, about a week or ten days. Worthy came in first and then Whitley came in, and then they came in again later on.

Q. Together—or separately? A. Yes.

Q. Taking the time when Whitley first came in, what was the conversation between you and Whitley? A. Well, Whitley wanted to take over that automobile, provided that it could be inspected, that is, placed in shape to be inspected, and secure a certificate of title. In other words, it would have to pass inspection. He was going to take over and assume Worthy's obligation.

Q. What did you do about that application of his in that regard? A. Well, just let it rest, until, of course, this thing could be passed.

Q. Then, when Worthy and Whitley came in together, what conversation ensued among the three of you? A. It was arranged that—the arrangement was made between the three, that that was to be done.



Q. What was said about inspection of the car at that time, whether that car was to be inspected and passed? A. Whitley said if it could be put in sufficient condition to pass inspection that he would take the obligation and  
33 assume it.

Q. State, to the best of your recollection, how long prior to the accident it was that the two of them came in together and talked about this. A. Well, it was possibly two or three days. It may have been longer.

Q. Now, on the day of the accident, did either of these men come into your office and talk with you? A. Yes.

Q. Which one? A. Whitley.

Q. What was the gist or purport of that conversation? A. They were going to have the car inspected.

Q. Who was going to have the car inspected? A. Whitley.

Q. What was going to happen then? A. We were going to transfer it to him, transfer the whole obligation, car and all to him.

Q. What arrangements had to be made regarding the title? What does the title have to do with the inspection? A. It all has to be assigned at the time the car is inspected, when there is an assignment made. They have to assign it over

By the Court:

Q. Who does the assigning? A. The owner.

Q. Who was the owner in this connection? A. Worthy.

By Mr. Frost:

Q. Let us see if I understand you. Worthy was to assign to Whitley, if the car could pass inspection? A. Yes.

Q. Then, after this inspection, was Whitley to come back, to do something further at the office, if the car passed inspection? A. Yes, sir.

34 By the Court:

Q. What was he to do when he came back to the office?

By Mr. Frost:

Q. If the car passed inspection, and they got it certified down there, what would have happened? What did you plan to do after that? A. He was assigned a deed of trust, chattel mortgage.



Mr. Turco. You mean Whitley?

The Witness. Yes.

By the Court:

Q. Had the title ever been transferred at the time he went downtown? A. No, sir.

Q. If the inspection had been made and proven satisfactory, what was the arrangement with this man Worthy? What was the arrangement with Worthy, about what he should do? A. Worthy, under those conditions, was to assign the title over to Whitley, and Whitley was to assume responsibility for the payments.

Q. That was the deal? A. Yes, sir.

Q. And that deal was to be consummated if and when the inspection was successfully passed? A. Yes, sir.

Q. On the day of the accident, did you have a man, Melancz, in your office? A. Yes.

Q. What did he do, generally? A. Well, he was our outside contact man.

Q. Did there come a time when any conversation was had in the office regarding tags, on the day of the accident? A. Yes, there was.

Q. State what that conversation was, and by whom.

35 A. Mr. Melancz and Whitley had gone up to the garage where the car was with no tags on it.

Q. Did anyone ask you for the loan of tags? A. Yes.

Q. Who was that? A. Whitley.

Q. Did he ask you, or Melancz? A. He asked Melancz.

Q. What if anything with respect to the tags did Melancz do? A. Well, Melancz was our contact man. He collected all accounts and made adjustments, and so forth.

The Court. What did he do about the tags, if anything?

The Witness. They got the tags.

The Court. When Whitley asked for the use of the tags, what if anything did Melancz do?

The Witness. He got the tags and took them out and put them on the car.

Q. Was the chattel deed ever executed by Whitley to your company? A. No, it was not.

By Mr. Frost:

Q. Insofar as you know, of your own personal knowledge, was the sale ever completed between Worthy and Whitley?

Mr. Turco. I still object to it, first of all because it is leading, and, secondly, because anything that happened between Whitley and the Auto Finance Company, by whom this man claims to have been employed, has nothing to do with the case.

The Court. I will permit it. I think the question is admissible.

A. No, sir.

By Mr. Frost:

Q. Did there come a time after this accident when the company did repossess this car? A. Yes.

36 Q. How long after the accident was that? A. Well, the car after the accident was taken to our storage lot, and Worthy was placed on a regular 10 days notice.

Q. At the expiration of that time, did you take over that car? A. Yes, and the car was not sold until about a month or so afterwards.

Cross Examination

By Mr. Turco:

Q. Who took the car to the storage lot? A. It was towed in.

Q. Who towed it in, please?

Mr. Myers. You mean, after the accident?

Mr. Turco. Yes.

A. Our machine, I think.

Q. Your machine? A. I think. I was not there.

Q. You were not there? When you answered this question and said it was taken to storage lot, was it towed in at your instruction? A. Our outside man was the one that handled that.

Q. Mr. Melancz? A. I think.

Q. To whose lot was it taken? A. Taken down to Henry Hitts'.

Q. Is that the lot you generally use? A. Yes, sir.

Q. Where is Henry Hitts' lot? A. Fifteen hundred and some South Capitol Street.



Q. You had a regular running account with Henry Hitts at this time? A. Yes.

Q. What was your position with the Automobile Finance Company in August of 1937? A. Manager in  
37 Georgetown.

Q. You were the manager, and you did have several conversations with Whitley. Do you recognize him sitting there? A. I think that is he.

Q. In these conversations that you had with Whitley—and, by the way, let me ask you this question: Who was in possession of the title to that automobile at that time? A. Well, it was in our possession.

Q. It was in your possession. Was not the certificate itself already signed by Worthy?

Mr. Frost. What certificate?

Mr. Turco. The certificate of title to the automobile in question.

Mr. Myers. Now we are getting down to records that can be produced. Why doesn't he produce the records?

The Court. I did not understand the answer of the witness.

Mr. Turco. That they had it in their possession.

The Court. What did they have?

Mr. Turco. The certificate of title to the car itself was in their possession, and it has just been testified to by him. My next question was whether or not an assignment had not been signed when it was handed to the Auto Finance Company.

The Witness. No, sir. I don't believe so, no, sir.

Q. Do you know, or do you say you don't believe so? A. I don't recall.

Q. Isn't it your practice to get the signatures on the assignment, on the back of the certificate, before you make a loan? A. No, sir.

Q. It is not the practice? A. No, sir.

Q. How long were you in the employ of the company after the accident? A. I am still in the employ.

38 Q. You are still employed by them? A. Yes, sir.

The Court. The Court will reverse itself and admit the testimony of what took place after the accident, not because it is material as to what took place after the



accident, but as throwing light on what was the situation before the accident.

Mr. Turco. Very well.

Q. Tell us, with respect to this parking place, whether or not there was a running account between you and the parking lot people.

Mr. Myers. I certainly submit that a running account with some parking lot company is certainly not relevant to what goes on before or after an accident.

The Court. The objection is sustained.

By Mr. Turco:

Q. Who paid for the storage? Let us find that out.

My Myers. Who paid for the storage on what?

Mr. Turco. On the automobile in question.

Mr. Myers. After the accident?

Mr. Turco. After the accident.

Mr. Myers. I think it is still objectionable, but I understand that your Honor wants that to go in for such light as it will throw on it?

The Court. On what the relationship of the parties was before the accident, only.

A. We had a working agreement with Mr. Hitts.

Mr. Turco. That is the very thing they have been objecting to.

Mr. Myers. I still cannot see that it is material.

By Mr. Turco:

Q. On the day, the very day of the accident, Worthy was not there? Was he there? A. Worthy?

Q. Yes. A. No.

39 Q. Had you made arrangements for him to come in and sign the certificate, or make the assignment?

A. Yes, sir.

Q. How soon before had you made those arrangements?

A. That has been a long time ago. I think it was about three or four days, as I stated before.

Q. When did you tell him to come in? A. Just as soon as the inspection was through.

Q. Did you tell him any day he was to come in? A. Yes. They were to come in that afternoon if the inspection was all completed—when they could get in.

Q. Directing your attention to the very morning of the accident, at your office, you keep these dealer's tags there, do you not? A. Yes.

Q. Mr. Whitley had been discussing with you the taking over of these notes which were overdue—is that correct? A. Yes, sir.

Q. Did you instruct Melancz to get the tags and go down with Whitley to the garage? A. I told him to go ahead and take the car and handle that account.

Q. You told Mr. Melancz to handle that account? A. I told him to handle that account.

Q. Which included the taking of the tags—by the way, you do not have that certificate of title with you today?

Mr. Myers. Yes. Here is a copy that we stipulated to.

Q. Did there come a time when Mr. Worthy did come in for the purpose of signing anything?

Mr. Myers. When? Before or after the accident?

By Mr. Turco:

40 Q. Did there ever come a time when Mr. Worthy ever came in after these conversations that you had had with him two or three weeks before the accident, for the purpose of assigning the car? A. No. He came in there—the motor in the original car went bad, and he had placed a new motor in that car, and I don't know where he ever got it from, but he could not produce title to that motor.

Q. You are speaking of Worthy? A. Yes, sir.

Q. Did he ever assign the certificate of title? A. He signed an application for that new motor.

Q. But he never signed the assignment on the certificate of title? A. I don't think so.

By the Court:

Q. Did the Finance Company have anything to do with his putting a new engine in the automobile? A. No, sir.

Q. Did Mr. Worthy ever sign an assignment either of the car or of the motor?

Mr. Myers. To whom?

Mr. Turco. To anybody.

Mr. Myers. That is a pretty broad question. I think he can only answer with respect to the business dealings he



had with this man. If he is speaking of anybody, I don't think he can answer a question of that sort.

The Court. If he can't answer it, he can say so.

A. The only thing I know is about that application.

By Mr. Turco:

Q. He merely signed an application? A. For that motor.

Q. He never actually signed the certificate of title?

A. No.

41 Mr. Turco. That is all.

Redirect Examination

By Mr. Myers:

Q. Mr. Olmer, wasn't there some confusion at this time with respect to the automobile because of this 1929 motor to which you just testified. A. Yes, there was.

By Mr. Myers:

Q. What was done as the result of this confusion with respect to the motor? A. It was necessary for Mr. Worthy to make application for that motor, to get it in his name, combine the car and the motor, to go into the new title.

Q. Now, then, I think you have already testified that there did come a time during the course of these dealings that you had with Worthy that he became behind in his payments. A. Yes, sir.

Q. Did you or your company endeavor to locate him? A. Yes, sir.

Q. Were you successful at that time? A. Not at that time, no.

Q. Were you also at that time looking for the automobile, too? A. Yes, sir.

Q. Were you able to locate the car? A. The car was located eventually at Walker's Garage.

Q. With respect to the location of the car, when was that as to the date of the accident? A. That was the day before the accident.

Q. Did you or your company take any steps with respect to the car at that time? A. None other than to try to work out this proposition of Mr. Whitley's, to protect his interests and take the car over.



42 Q. That was when you had your first conversation with Mr. Whitley on the matter? A. Yes, sir.

Q. Did you at any time in the course of these negotiations with Mr. Whitley and with Mr. Worthy yourself or send a representative down to Walker's Garage to take possession of the car? A. No, sir.

Mr. Turco. That is a conclusion, and I move that the question and the answer be stricken. An agent—your Honor is the one to decide whether there is agency here or not, and not Mr. Myers.

The Court. It has been agreed in this case that the car remained at the Walker Garage. There is hardly any longer a matter of doubt about that.

Whereupon there was introduced into evidence the following on behalf of the defendants:

1. Application for certificate of title;
2. Certificate of title to car;
3. Certificate of title to motor only.

Q. I think you have already testified, but I will ask you again, was there at any time an assignment of the title to the automobile by Mr. Worthy to your company? A. No.

Mr. Turco. He said he could not remember.

By Mr. Myers:

Q. Can you answer that yes or no? A. I do not think so.

Recross Examination

By Mr. Turco:

Q. Why did you keep the certificate of title? A. We keep the certificate of title with every contract we have.

Q. On all cars? Isn't that a fact? A. Yes, sir.

43 Q. Why do you do that?

The Court. It is perfectly obvious, but you can ask the question. A. It is the regulation of finance companies; I think they are all doing it.

By Mr. Turco:

Q. For their protection? A. I assume so, yes.

Mr. Myers. That is so obvious.

By Mr. Turco:

Q. You said you looked for the car and found it some time before the accident? Isn't that correct? A. Yes, the car was found before the accident.

Q. Some time before the accident? Wasn't that the testimony? A. Yes, sir.

Q. And you said you took some steps to protect Worthy's interests? Is that correct? A. Whitley's, not Worthy's.

Q. To protect Whitley's interest? Is that correct? A. Well, they had some sort of an agreement between themselves.

Q. I am asking you if you did not testify that you took some steps for Whitley's interest. Is that correct? A. That is right.

Q. Didn't you take some steps for your own interest? A. No sir.

44

*Designation of Record*

Filed December 21 1939

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The clerk of the District Court of the United States for the District of Columbia will please prepare a record on appeal in this case, and the following papers are hereby indicated for inclusion in the record:

1. The complaint (Declaration).
2. The pleas.
3. Memo: Verdict of jury by direction of the Court at close of the entire case.
4. Judgment.
5. Memo: Cost bond approved and filed.
6. Assignment of errors.
7. Narrative statement of evidence.
8. This designation.

JOSEPH C. TURCO  
IRVING B. YOCHELSON  
*Attorneys for Plaintiff.*

Service of a copy of the above designation of record acknowledged this 21st day of December, 1939.

FROST, MYERS AND TOWERS,  
*Attorneys for Defendant.*

By NORMAN B FROST

45 District Court of the United States  
For the District of Columbia

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, CHARLES E. STEWART, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 44, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 89776 at Law, wherein Pearl E. Mason is Plaintiff and Automobile Finance Company, Inc., a corporation, is Defendant, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 5th day of January, 1940.

(Seal) C. E. STEWART,  
*Clerk.*

Endorsed on cover: No. 7567 Pearl E. Mason, Appellant, vs. Automobile Finance Company, Inc. &c. United States Court of Appeals for the District of Columbia Filed Jan 9-1940 Joseph W. Stewart, Clerk







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United States District Court of Appeals  
for the District of Columbia

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JANUARY TERM, 1940.

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No. 7567.

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UNITED STATES  
COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

FILED APR 29 1940

*Joseph W. Stinson*

CLERK

PEARL E. MASON,  
APPELLANT,

*vs.*

AUTOMOBILE FINANCE COMPANY, INC.,  
A Corporation, APPELLEE.

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**BRIEF FOR APPELLANT.**

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IRVING B. YOCHELSON,  
JOSEPH C. TURCO,  
*Counsel for Appellant.*





United States District Court of Appeals  
for the District of Columbia

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JANUARY TERM, 1940.

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No. 7567.

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PEARL E. MASON,

APPELLANT,

*vs.*

AUTOMOBILE FINANCE COMPANY, INC.,

A Corporation, APPELLEE.

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BRIEF FOR APPELLANT.

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Statement of Case.

For the purpose of clearness, the appellant and appellee will be referred to as plaintiff and defendant, respectively, the positions they occupied in the Court below.

The plaintiff, Pearl E. Mason, sued the defendant in the Court below, the complaint (declaration) being in four counts. (R. pp. 1 to 7.) That portion of the complaint that is necessary for a lucid discussion of the points involved is herewith briefly set forth, that is to say: “\* \* \* that the defendant was the owner and/or in control of a motor vehicle, and that by and through

its agents, servants and employees, it was operating said motor vehicle upon the public streets in the District of Columbia \* \* \*." (R. pp. 2, 3, 4 and 5.)

To this complaint the defendant, among other defenses (pleas) denied " \* \* \* that it was the owner and/or in control of a certain motor vehicle which was being operated in a southerly direction on South Capitol Street, at or near its intersection with O Street \* \* \* in the District of Columbia \* \* \*." (R. p. 7.)

### **Assignment of Error.**

The direction of the Court to return a verdict for the defendant.

### **Argument.**

The argument of this case resolves itself to the proposition of whether or not the defendant finance company was either the owner of the car or exercised such control over the automobile in question as to make it liable under the law.

The theory of the plaintiff, both in her complaint (declaration) as well as upon the trial, is based upon three propositions. First, can the act of the defendant in placing its license tags on the automobile in question be construed to amount to a repossession of the automobile. Second, can the words and acts of Melancz, the admitted agent of the defendant, directing Whitley, the prospective purchaser of the automobile, to get into the car and follow him, be construed to mean control? And third, under all of the circum-



stances of the case, wasn't the question of repossession and control one for the jury?

The uncontradicted evidence shows that the plaintiff in this case suffered severe injuries. It shows further that such injuries were inflicted by the negligent operation of the automobile in question.

The sole ground upon which the Court directed a verdict for the defendant was failure on the part of the plaintiff to prove ownership or control of the automobile in question.

The argument of this case upon appeal necessitates the taking into consideration the testimony of the only witnesses who testified for the plaintiff and the defendant upon these points.

Briefly, the evidence will show that one Clarence Worthy, at one time owner of the automobile in question, had borrowed money from the defendant and had given as security a chattel mortgage on said automobile, together with an assignment of the certificate of title in blank; that at the time of the accident, which occurred on August 4th, 1937, Worthy was in default in his payments and that on Clinton Whitley had been negotiating with the defendant to take over the car and assume the indebtedness. The evidence will further indicate that Whitley had discussed this matter on several occasions with one J. G. Olmer, the manager of the finance company, and that on the day in question, Whitley called at the office of the finance company, where he was introduced to one Melancz, an employee or outside contact man for the defendant, and after some conversation Whitley and Melancz, with

tags issued to the defendant, went to Walker's Garage, where the tags were placed on the automobile so that it could be driven through the streets to the place of inspection.

The evidence will further indicate that as Whitley and Melancz were about to leave the garage, Melancz instructed Whitley to follow him to a junk dealer to buy some parts for the automobile. Whitley did not know where the junk dealer was located, and was, therefore, directed by Melancz to follow him. Melancz chose the route, set the pace and otherwise governed the manner of operation of the car. On the way to the junk dealer, and at the intersection of South Capitol and O Streets, in the District of Columbia, the collision in which the plaintiff was injured occurred. Whitley was driving the automobile with the finance company tags, following the car operated by Melancz, as instructed.

Immediately after the collision, Melancz, who was in possession of the registration card for the tags which had been issued to the said finance company, handed the registration card to Whitley so that he could show it to the police when they got there. The police arrested Whitley, and at the police station Melancz advised Whitley that his company's lawyer would take care of everything.

Whereupon, the plaintiff closed her case.

The defendant then placed upon the stand on its behalf J. G. Olmer, manager of the Automobile Finance Company, defendant. Olmer recalled having talked with Whitley about transferring to him the automo-



bile, together with the obligation, two or three days prior to the accident, and on the morning of the accident Olmer directed Melancz, the outside contact man, to take the dealer's tags of the defendant company, place them on the automobile in question, and do everything necessary to handle the account.

On cross-examination, Olmer admitted that Worthy was in default on his notes; that immediately after the collision the automobile was removed, upon his instructions, to the parking lot of Harry Hitt, located at 1500 South Capitol Street, and that the defendant paid the storage. He further testified, on cross-examination, that the defendant had a running account with Hitt.

Olmer also testified that the certificate of title for the automobile was, on the day of the accident and for quite some time prior thereto, in the possession of the defendant corporation, assigned in blank by the said Clarence Worthy, and further, that on the day of the accident he had directed Melancz to take the car and have it inspected. It was further testified that the car remained in the exclusive possession of the defendant thereafter until it was subsequently sold by them.

It is one of the plaintiff's contentions that the acts exercised over the automobile in question amounted to a repossession, that is, the placing of the tags issued to the defendant on the automobile, and the removal of it from the garage by Melancz, were such acts as would amount to repossession.

The owner of the automobile, Clarence Worthy, took no part in the matter of the removal of the automobile.



In fact the evidence show that he was not even present.

The chattel mortgage which the defendant held as security for the loan made to Worthy, then in default, gave the right to the defendant to repossess same without notice or without legal proceedings. This right the defendant exercised by the acts testified to.

With respect to this point, the law is as follows:

After default, a mortgagee may take possession peaceably, without any action for the purpose, wherever he finds the chattel, without demand, or without the knowledge or consent of the mortgagor.

*Lange vs. Midwest Motor Securities Co.*, 209 Mo. App. 197; 231 S. W. 272.

*Goodman vs. Schulman*, 258 N. Y. S. 681; 144 Misc. 512.

The vast majority of decisions, indeed, hold that upon breach of any condition of a chattel mortgage, an absolute title to the property thereupon vests in the mortgagee—even without possession.

*In re Pachard Press*, 5 Fed. (2d) 355.

Jones "Chattel Mortgages", Vol. 2, p. 456, Par. 699, and cases cited.

A mortgagee acquires absolute title to mortgage property upon default, and therefore cannot be guilty of conversion.

*Murray vs. Erskine*, 109 Mass. 597.

And where a finance company to which a conditional sales contract of a truck was assigned, and it under its

title, repossessed the truck after the purchaser's default and permitted the seller to use it, the Court held that the finance company was the owner within the meaning of the statute making the owner of a motor vehicle for injuries resulting from the negligent operation thereof by another, with his consent.

St. Joseph vs. Grantham Motor Sales Co., 269 Mich. 260; 257 N. W. 701.

The least that can be said in connection with this point is that the question of repossession became one for the jury to decide.

If it should be concluded by the Court that there was no repossession, then, the defendant is confronted with the question of control and management of the automobile at the time of the collision.

The plaintiff contends that the undisputed evidence discloses control of the automobile on the part of the defendant at the time of collision.

It may be recalled that on the day of the accident, August 4, 1937, Melancz, "outside contact man" for the defendant, at the request of Olmer, defendant's manager, took the defendant's "dealer's tags" and placed them on the automobile in question. After this was done, Melancz told Whitley to follow him to the junk dealer, and it was while enroute to the junk dealer that the collision occurred. It is true that Whitley was driving the automobile. However, it is equally true that this could not be done without tags furnished by the defendant. Furthermore, Whitley was under the direct supervision of Melancz, the admitted employee of the defendant.

Moreover, the evidence discloses that immediately after the accident Melancz, who had the registration card issued for the car in his possession, handed it to Whitley. For what purpose? To show it to the police when they got there.

At this point let us digress for a moment. Is it conceivable that the defendant company would have had the registration card as well as the certificate of title to the car if repossession had not already taken place?

But this control of which we speak did not stop there. It continued for quite some time after that, because several hours later at the police station, Melancz told Whitley that all would be all right, his company would get a lawyer to take care of everything. To go still further, by way of showing control, the wrecked automobile was removed at the request of the defendant to a parking lot of its choice where it remained until sold by the defendant. Incidentally the defendant paid the storage fee.

The plaintiff concedes that the automobile was not being driven by any person directly employed by the defendant on the day of the collision, but it was being driven by Whitley who was under the direct supervision and control of Melancz, "outside contact man", for defendant.

There was no denial in this case that the defendant was in control of the automobile. An attempt was made to show that the defendant was not the owner of the automobile, but nowhere on the part of the defendant does the evidence disclose that it was not in control.



Although it is not settled in this jurisdiction, the law in some states and the trend of authority in many others is that any person who permits the use of his tags by another, contributes to or participates in the creation of a nuisance and is liable for all injurious consequences proximately resulting therefrom.

McDonald vs. Dundon, 242 Mass. 229; 136 N. E. 264.

Indeed, the Massachusetts Courts, as in many other instances, are leading the way, later to be followed by other states, to a saner and more logical interpretation of the law, that a person who sets in motion a nuisance resulting in injury shall be liable therefor in damages.

Our own Finance and Liability Act, approved May 3rd, 1935, took a long step in that direction when it provided that whenever any motor vehicle, after the passage of this act, shall be operated upon the streets of Washington by any person other than the owner, with the expressed or implied consent of the owner, such operator shall be deemed to be the agent of the owner and the proof of the ownership of said motor vehicle shall be *prima facie* evidence that such person operated said motor vehicle with the consent of the owner.

Forrest vs. Jarmen, 90 Fed. (2d) 412.

Walsh vs. Rosenberg, 81 Fed. (2d) 559.

Independent of any question as to ownership, it is submitted that the automobile was under the control of the defendant on the day of this collision.

The automobile in question bore the "dealer tags" issued to the defendant, and in a great many states,

under statutes providing for same, the presumption arises that the car was being operated by the defendant (that is, the dealer) or someone acting under his authority for the purpose for which the dealer's tags were issued.

Haring vs. Connell, 244 Pa. 439; 90 A. 910.

Theil vs. Wolfe, 77 Pa. Super. 312.

Lotz vs. Hanlon, 217 Pa. 339; 66 A. 525.

Miller vs. Service & Sales, 38 P. (2d) 995  
Oreg.

Under the Motor Vehicle Title and Registration Regulations for the District of Columbia, approved July 18th, 1931, a copy of which was introduced in evidence, Section 13 provides, among other things, that the dealer "may use for purposes permitted herein dealer's identification tags on motor vehicles or trailers in his possession but not owned by him, for a period of five days and not longer: Provided, that he first obtain from the owner of said motor vehicle or trailer written permission for such use".

No such permission having been sought nor obtained in this case, as the undisputed evidence indicates, the un rebuttable presumption arises that the car was either owned by the defendant; was under the control of the defendant or was being used in its business by its consent.

Simmons vs. Brooks, 72 Fed. (2d) 86.

Miller vs. Sales and Service, 38 P. (2d) 995  
(Oregon).

Justice Cordoza, in the case of Ferris vs. Sterling, 214 N. Y. 249; 108 N. E. 406, states:



“The license number of the car, coupled with evidence that the defendant held the license, was *prima facie* proof that defendant was the owner. It was more than that; it was *prima facie* proof that the custodian of the car was then engaged in the owner’s services”.

The third contention of the plaintiff is that under all of the circumstances of the case the Court should have permitted the case to go to the jury to determine, first, whether or not the acts of the defendant constituted repossession; secondly, whether or not the control exercised over the automobile was such as would raise the presumption of ownership; and thirdly, whether the defendant’s control of the automobile was such as would create liability irrespective of ownership.

The evidence in the case, at least with respect to the second point, is uncontradicted. Whitley testified to positive acts of control, as follows:

1. The placing of the tags on the automobile by the defendant.
2. The direction that he, Whitley, follow Melancz to a junk dealer, of whose location Whitley had no knowledge.
3. The choice of the route and manner of travel by Melancz.
4. The handing of the registration card by Melancz to Whitley immediately after the accident.
5. The removal of the wrecked automobile by the defendant corporation to a parking lot of its choice.



6. The payment by the defendant of storage on the automobile.

7. The language of Melancz when he told Whitley that the corporation's lawyer would take care of everything.

8. The subsequent sale of the automobile by the defendant.

It must also be remembered that nowhere in this transaction, from beginning to end, do we have Clarence Worthy involved. He was not present on the day of the accident, and even though it can be assumed that he was still the owner of the automobile, there was certainly no one present during the entire day on which the accident occurred who could dispute the right of the defendant to the possession and control of the motor vehicle. Certainly, Whitley was in no position to dispute it. On the contrary, he was subject to and accepted the orders and directions of only the defendant or its employees.

The state of the facts in this case is such that reasonable men might differ upon, especially with respect to repossession and the exercise of control, and if so, the case was one for the jury, for the familiar rule in this regard has been settled in this jurisdiction both by our own Court of Appeals and the Supreme Court of the United States.

In the case of *Gunning vs. Cooley*, reported in 58 App. D. C. 305, the Court uses the following significant language upon the question of a directed verdict:

“The Courts of review in this country are applying with increasing strictness the rules limiting the right of the trial judge to invade the province of the jury. \* \* \* The rule more generally followed is that ‘it is only where all reasonable men can draw but one inference from the undisputed facts that the question to be determined is one of law for the Court.’ ”

“Judged by these standards the refusal of the trial court to direct a verdict for the defendant was right. For, while the testimony was conflicting upon important points, there was substantial evidence in support of the plaintiff’s claim. If the plaintiff’s evidence be accepted as true, together with the reasonable inference deducible from it, it would be clearly wrong to say that all reasonable men could draw but one conclusion from it and that conclusion utterly opposed to the plaintiff’s right to recover.”

To the same effect:

Milton vs. Gustenberg, 43 App. D. C. 165.

Chalvet vs. Houston, 43 App. D. C. 77.

Faucett vs. Bergmann, 57 App. D. C. 290.

In the case of Gunning vs. Cooley, reported in 281 U. S. 89, at Page 94, the Court says:

“Issues that depend on the credibility of witnesses, and the effect or weight of evidence are to be decided by the jury. And in determining a motion of either party for a peremptory instruction, the Court assumes that the evidence for the opposing party proves all that it reasonably may be found sufficient to establish, and that from such facts there should be drawn in favor of the latter all the inferences that fairly are deducible from them”.

**Conclusion.**

It is respectfully submitted that the trial court erred in directing the jury to return a verdict for the defendant, and, therefore, the judgment entered should be reversed and a new trial ordered.

Respectfully submitted,

IRVING B. YOCHELSON,  
JOSEPH C. TURCO,  
*Attorneys for Appellant.*







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United States District Court of Appeals  
for the District of Columbia

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JANUARY TERM, 1940.

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UNITED STATES  
COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

No. 7567.

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FILED MAY 18 1940

*Joseph W. Sturmer*

PEARL E. MASON,  
APPELLANT,

vs.

AUTOMOBILE FINANCE COMPANY, INC.,  
A Corporation, APPELLEE.

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BRIEF FOR APPELLEE.

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**United States District Court of Appeals  
for the District of Columbia**

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**JANUARY TERM, 1940.**

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**No. 7567.**

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**PEARL E. MASON,  
APPELLANT,**

*vs.*

**AUTOMOBILE FINANCE COMPANY, INC.,  
A Corporation, APPELLEE.**

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**BRIEF ON BEHALF OF APPELLEE.**

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**Facts of the Case.**

The appellant, Pearl E. Mason, plaintiff below, sued to recover damages from the defendant, Automobile Finance Company, Inc., a corporation, defendant below, for personal injuries and losses sustained by her on August 4, 1937, as a result of a collision at the intersection of South Capitol and O Streets in the District of Columbia between her automobile and another automobile which plaintiff claimed was owned and/or under the control of the defendant corporation through its servants, agents and employees. Defendant, in its pleas to the declaration, denied that it was the

owner and/or in control of the automobile which had collided with plaintiff's automobile and, upon information and belief, denied all negligence and charged plaintiff with negligence contributing to the accident. At the conclusion of all the testimony, upon motion duly made by the defendant, the Court directed the jury to return a verdict in favor of the defendant on the ground that plaintiff had failed to establish that the automobile in question was owned by and/or under the control of the defendant.

Therefore, the sole question presented for determination on appeal to this Court is whether or not the Court below erred in directing a verdict for the defendant.

As appellee cannot concur in certain of the factual conclusions in appellant's "Statement of the Case", appellee will briefly review the evidence in the record which consists of the questions and answers of two witnesses: Clinton Whitley, driver of the automobile which was in collision with plaintiff's automobile, and J. G. Olmer, manager of defendant's local office.

One Clarence Worthy was the owner of an automobile on which he had obtained a loan from the defendant finance company secured by a chattel mortgage. He had also left with the defendant the certificate of title to his automobile, unassigned, as was the practice of the defendant in respect to such loans. Worthy got behind in his payments on the loan and the defendant through its agents had not been able to find either him or the automobile. In the meantime, Worthy had entered into a sales agreement with one

Clinton Whitley under which Whitley was to put the automobile in proper condition and, if it could pass official inspection, Worthy was to assign his title to him and Whitley was to take over the indebtedness of Worthy with the defendant finance company. Whitley called at defendant's local office and outlined the arrangement with defendant's agent but nothing was done as the condition was that Whitley should first place the car in condition and have it pass inspection. For that purpose Whitley bought a new motor and a battery. He went to the defendant's office several times to meet Worthy but the latter never appeared. Whitley finally met Worthy and several days before the date on which the accident occurred brought him into defendant's office. The defendant actually did not locate the car at Walker's Garage until the day before the accident, although it had apparently been there for a long time. The car had no tags and Whitley arranged with the defendant company for a loan of some dealer's tags in order to have it taken down for official inspection. Whitley also found it necessary to purchase additional parts for the automobile and Mr. Melancz, an outside contact man for defendant who collected payments due on loans and made adjustments in connection therewith, told Whitley on the day of the accident when they went to Walker's Garage with the tags for the car that he (Melancz) knew a junk yard where parts could be obtained at a cheaper price. Whitley got into the automobile and started to follow Melancz, who was leading the way in his own automobile, to the junk yard. En route a collision occurred at South Capitol and O Streets between the car operated by Whitley and the automobile driven by the plaintiff. It was agreed that Whitley, after purchasing the additional parts at the junk yard



and provided the car thereafter passed official inspection, was to return to defendant's office and there Worthy would assign his certificate of title to Whitley and the latter would assume the payment of the loan. After the collision, the automobile was removed at the direction of defendant's agent from the intersection to a parking lot. Later, Worthy was given 10 days notice that he had defaulted in payments on his loan and that the car would be repossessed and sold. A month or so later the automobile in question was sold. The question of liability for the collision at the intersection was never determined in the Court below.

### **ARGUMENT.**

The facts of the case were undisputed and the applicable principles of law are equally plain.

The evidence discloses that the defendant corporation was not the owner of the automobile that was in collision with plaintiff's automobile on August 4, 1937; that no servant, agent or employee of the defendant corporation was in control of the automobile in question; and that the automobile was not being operated on the business of the defendant corporation at the time of the collision.

#### **I. The Defendant was not the Owner.**

There is no contention on the part of the plaintiff that defendant finance company was the owner of the automobile which struck her.

Plaintiff admits that the title to the automobile was in one Clarence Worthy (R. 21) (Appellant's Brief—

p. 5) who had obtained a loan from defendant and had given a chattel deed of trust as security.

The Automobile Financial Responsibility Act of May 3, 1935 (49 Stat. 166) established a new rule of liability in the District of Columbia by providing that (sections 255-255b)—“Whenever any motor vehicle \* \* \* shall be operated upon the public highways of the the District of Columbia by any person other than the owner, *with the consent of the owner*, express or implied, the operator thereof shall, in case of accident, be deemed to be *the agent* of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be *prima facie* evidence that such person operated said motor vehicle with the consent of *the owner*.” (Italics ours.) See *Forrester v. Jerman, et al.*, 90 F. (2d) 412, 413, 67 App. D. C. 167.

The above statutory provisions are, however, wholly inapplicable to the facts of the present case inasmuch as the uncontradicted evidence shows that the ownership of the involved automobile was in one Clarence Worthy, who is not a defendant herein, and who is a person not connected with defendant's business.

## **II. The Defendant did not Repossess the Automobile Prior to the Accident.**

Plaintiff contends that the defendant acting through its agent and employee Melancz repossessed the automobile under the chattel mortgage given by the owner Worthy as security.

No testimony in the case, or any inference to be drawn therefrom, supports this contention.



It is true that due to the default of the owner Worthy in the payments due on his loan, the defendant upon notice would have had a right to repossess the automobile; but the evidence indisputably shows that actual repossession of the automobile by the defendant did not occur until at least 10 days after the accident (R. 27).

The defendant had not been able to locate the owner Worthy with reference to his back payments on the loan. There was also some confusion with respect to the title to a new motor which had been put in the car by the owner Worthy (R. 31). As a matter of fact, Whitley himself eventually brought the owner Worthy into defendant's office at a time during the course of negotiations for transfer of the car from Worthy to Whitley (R. 20), (R. 25). The defendant did not know where the automobile was being kept and did not actually locate it at Walker's Garage until the day before the accident (R. 15), (R. 31).

During a period of three weeks or more before the accident, negotiations had been taking place between the owner Worthy and his prospective purchaser Whitley. Part of the agreement was that Whitley should put the car in condition to pass an inspection test and for that purpose he had already paid \$130.00 for a motor (R. 20). It was this motor which had been put in by the owner Worthy and had caused some confusion in getting a combination of the title to the automobile and the title to the new motor (R. 30, 31 and 32). Whitley had agreed that if and when the car was placed in proper condition and had passed official inspection, he would then take title to the car and assume payment of the chattel mortgage given by



Worthy. A discussion on this proposal was held with defendant's agents on several occasions and it was ultimately agreed that Whitley should first have the automobile pass inspection and then return to defendant's office in order to have Worthy assign his title to Whitley. Then and then only the latter was to be substituted as defendant's debtor in the place of Worthy.

The entire sequence of events as shown by the evidence does not even indicate an intention on the part of the defendant to repossess the car. Whitley advised the defendant's agent of his agreement with Worthy to take over the car provided it could pass inspection, and defendant indicated its willingness to have Whitley work out this agreement with Worthy. There was therefore neither need nor reason for repossession at that time.

Defendant's local manager Olmer specifically denied that any representative of the defendant had ever been sent down to take possession of the automobile prior to the accident (R. 32) but stated that the car was repossessed about 10 days after the accident and was sold about a month or so later (R. 27).

Plaintiff has cited in her brief a number of decisions with respect to the right of a mortgagee to take possession of a chattel after default. We have no reason to disagree with the law on that point. Such authorities apply, however, only to cases where a mortgagee has taken steps to exercise that right, which is not the fact in the present case.

None of the cases cited on pages 6 and 7 of appellant's brief appear to be in point. *Lange v. Midwest Motor Securities Company* (actual repossession of the automobile had occurred); *Goodman v. Schulman* (the chattels involved had actually been repossessed); *Murray v. Erskine* (the mortgagee had repossessed the schooner); *St. Joseph v. Gratham Motor Sales Co.* (actual repossession had taken place).

*In re Packard Press* (also cited) involved a New York statute which made the recording of a chattel mortgage equivalent to physical possession by the mortgagee and upon default, mortgagee's title, defeasible only by payment of the debt secured, immediately became absolute by operation of law.

There is no such statute involved in the present case. In addition, the mortgagee not only had not repossessed the automobile in question but had no intention of doing so in view of the pending negotiations between Whitley and Worthy.

We are certain that plaintiff does not seriously mean to argue that immediately upon default under a chattel mortgage, title vests in the mortgagee to such an extent that any person operating the automobile (chattel) becomes for all purposes the agent of the mortgagor. Certainly such a statement is *not* the law with respect to the operation of automobiles in the District of Columbia when covered by chattel mortgages.

### **III. Defendant had no Control over the Automobile.**

Plaintiff avers that the evidence discloses that the defendant was in control and had supervision of the



automobile at the time of the accident. If the defendant had control, the defendant, being a corporation, had to exercise that control through some duly authorized agent acting within the scope of his employment.

Plaintiff admits that Whitley was not an agent or employee of the defendant but says that the control and supervision over Whitley was exercised by one Melancz, "outside contact man" for the defendant. According to the testimony, Mr. Melancz collected all accounts and made adjustments (R. 26). There is no evidence that he was authorized by the defendant or that it was his usual practice to aid prospective purchasers of automobiles on which the defendant held chattel mortgages in passing official inspection or in arranging transfers from the mortgagor to some prospective purchaser. The defendant company was not engaged in the re-conditioning and sale of automobiles. It dealt solely with loans on automobiles and Mr. Melancz was employed to collect payments due on such loans and to make necessary adjustments in connection therewith.

Whitley testified that he was to put Worthy's car in condition to pass inspection and, if such inspection was passed, he was then to obtain an assignment of the title to the car registered in the name of Clarence Worthy and to take over Worthy's indebtedness with the defendant. If the car did not pass official inspection, it naturally followed that defendant would then have to obtain its overdue payments from the owner and mortgagor Worthy or exercise its right to repossess and sell the automobile, as defendant actually did *after* the accident.



In addition to a new motor, which Whitley bought at a price of \$130.00 (R. 20), Whitley had also purchased a battery for the automobile. Other parts essential to its proper re-conditioning in order to pass inspection were also needed, and Mr. Melancz volunteered to show him a junk yard where the parts could be obtained at a cheaper price. Whitley wanted to get these parts and was going to pay for them as he had done for the engine and battery. Mr. Melancz knew the location of the junk yard and offered to lead the way for Whitley. En route to the junk yard, the accident occurred.

Contrary to plaintiff's argument, it is clear that Melancz was acting at the time, not as agent for the defendant in furtherance of its business, but as a "friend" of Whitley in aiding him in getting parts necessary to the proper repair of the automobile so that Whitley could obtain transfer of title after it had passed official inspection.

In plaintiff's brief (page 8) there is a statement to the effect that the defendant had the registration card to the automobile owned by Clarence Worthy. That is apparently an error, because at no point in the record is there testimony that the defendant held the registration card to the automobile. The defendant did have the registration card for the tags (R. 18) which witness Whitley claims was handed to him after the accident by Mr. Melancz. The defendant company had permitted the use of certain dealer tags so that Whitley might move the automobile from Walker's Garage to the place where official inspection must approve its condition prior to any transfer of title from Worthy to Whitley.

The evidence shows that the defendant did hold the unassigned certificate of title to the automobile, as is the custom in all cases of chattel mortgages securing loans on automobiles; but it did not have the registration card.

Any facts showing what happened to the automobile after the collision, we submit, are wholly immaterial and incompetent to prove that either the automobile was owned by the defendant or under its control at the time of the accident. After the collision had taken place, and the prospective purchaser Whitley had been arrested and charged with reckless driving, defendant merely had the automobile removed from the street intersection to a parking lot for its own protection as mortgagee. It was not until after Clarence Worthy had been given 10 days notice concerning his default that repossession occurred and the car was sold.

#### **IV. The Loan of Tags by Defendant does not Impose Liability on Defendant.**

Plaintiff further attempts to impose liability on the defendant by invoking what is termed the Massachusetts doctrine with respect to an automobile dealer loaning tags to a third person for the operation of an automobile on the public highways. This doctrine, which is the minority rule in this country, is stated in Blashfield's Encyclopedia of Automobile Law, Volume 1, page 216, Sec. 3 as follows:

“As a general rule, all persons who contribute to or participate in the creation of a nuisance are liable for injurious consequences proximately resulting therefrom to individuals, and an automobile dealer unlawfully lending number plates, issued to him as such, for use by another on an un-



registered automobile, can be found, under the Massachusetts doctrine, to have thereby aided and abetted in the creation of a nuisance from the operation of such automobile upon the highway, and on such finding will be liable for injuries sustained in a collision with the automobile as the dealer is presumed to have known that the operation of the machine would be illegal and a nuisance and it may fairly be presumed that without such number plates the operation of the car would not have been attempted."

In other jurisdictions, a dealer so unlawfully lending license plates for use on another's machine, does not thereby incur liability for an accident caused by the latter, for the reason that there is no causal relation between the lending and the accident. The general rule of law holds that the fact that an automobile is not properly registered or licensed does not create a liability unless such fact contributed to the accident.

In *Worsham Buick Co. v. Isaacs*, 51 SW (2d) 277 (Texas 1932), the Court said:

"The act of an automobile dealer in permitting the use of dealer's license plates on a car not driven for demonstration purposes is not the proximate cause of the death caused by collision of such car with another.

"\* \* \* It has been held in Massachusetts \* \* \* that the operator of an unregistered automobile, or one without the required license plates attached, is, so far as other travelers are concerned, an outlaw, except in respect of injuries wantonly inflicted upon him. But this rigorous doctrine has been repudiated in this state as well as most other states where it has come under consideration. *St. Louis B. & M. Ry. v. Price*, 269 S. W. 422; 1 *Berry on Automobiles* (6th Ed.) sec. 279 \* \* \*."



See also *Buchholz v. Breitbach*, (1927), 193 Wis. 224, 213 N. W. 329; *Wilson v. Railroad*, 140 Kan. 647, 98 P. (2d) 124; *Moreau v. G.*, (La. App.) 166 So. 660; *Toole v. M-W M. Co.*, (La. App.) 180 So. 431; *Walters v. H.*, (Mo. App.) 118 S. W. (2d) 39; 103 S. W. (2d) 498; *Bradley v. C. C. O. Co.*, (Okla.) 84 P. (2d) 629; *Morgan v. H. M.*, (Pa.) 197 A. 920; *Jenkins v. S.*, (W. Va.) 199 S. E. 368; and 16 A. L. R. 1117 (citing cases not following Mass. rule).

Plaintiff also states that under the Motor Vehicle Title and Registration Regulations for the District of Columbia, approved July 18, 1931 (which are not shown by the transcript of record to have been admitted in evidence) Section 13 provides that the dealer may use dealer's identification tags on motor vehicles *in his possession* provided that he first obtains written permission of the owner.

Such regulation is not applicable to the facts of the present case. The defendant was *not* in possession of the automobile. Whitley had taken possession of the car and was operating it. Whitley was not an employee or agent of the defendant. Whitley was using the dealer's tags on the automobile in order to buy additional parts to put it in condition and thereafter to secure official approval. Whitley had an agreement with the owner Worthy concerning the purchase of the car. Defendant had no reason to obtain permission of Worthy to use the automobile.

The mere use on the colliding vehicle of tags registered in the name of defendant finance company, uncoupled with ownership of the car, or any evidence

that the car was being driven by defendant's employee or agent on a purpose connected with defendant's business, does not impose liability on defendant.

### V. There were no Facts to Submit to the Jury.

Unless the facts are in dispute and reasonable men might differ thereupon, it was the duty of the Court below to direct a verdict and to take the case from the jury.

In *Jackson v. Capital Transit Company*, 99 F. (2d) 380, 69 App. D. C. 147, 148, this Court said:

"However, on a motion for a directed verdict, it is well settled that the evidence must be construed most favorably to the plaintiff; to this end he is entitled to the full effect of every legitimate inference therefrom. If upon the evidence, so considered, reasonable men might differ, the case should go to the jury; if, on the other hand, no reasonable man could reach a verdict in favor of the plaintiff, the motion should be granted. A mere scintilla of evidence is not sufficient for this purpose, however. The question is not whether there is any evidence 'but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.' *Pleasants v. Fant*, 22 Wall. (U. S.) 116, 121. The burden being upon the plaintiff 'to establish the negligence and injury alleged; \* \* \* if the evidence failed adequately to support either element, defendant's motion should have been granted.' *Gunning v. Cooley*, 281 U. S. 90, 95. The practice of directing verdicts when there is only a scintilla of evidence 'not only saves time and expense, but, "gives scientific certainty to the law in its application to the facts and promotes the ends of justice."'. *Pennsylvania R. R. v. Chamberlain*, 288 U. S. 333, 343."



See also *Boaze v. Windridge & Handy Inc.*, 102 F. (2d) 628, 629, 70 App. D. C. 24; *Regal Cleaners & Dyers Inc. v. Pessagno*, 109 F. (2d) 453, App. D. C. , 68, W. L. R. 178, 179; *Hellweg v. C. & P. Telephone Co.*, App. D. C. ; 68 W. L. R. 371, 372.

There is no issue of negligence in this case. The sole question is one of agency. The record is wholly silent on any showing that the automobile, owned by Worthy and driven by the prospective purchaser Whitley en route to fulfill a purpose of Whitley's, was in any wise controlled or operated by any employee or agent of the defendant finance company on its business. There is therefore not even a scintilla of evidence to submit to the jury on that point as the facts concerning the ownership, operation and control are certain and clear and leave no doubt on which reasonable men could disagree.

We therefore respectfully submit that the Court below did not err, upon the record made before it, in directing a verdict in defendant's favor, and hence its action in so doing should be affirmed.

Respectfully submitted,

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